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McAneny, George

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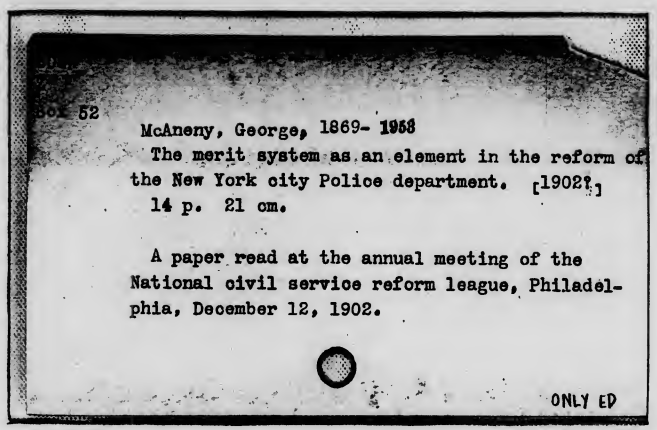
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The Merit System as an Element in the Reform of the New York City Police Department.

BY

GEORGE McANENY.

The Merit System as an Element in the Reform of the New York City Police Department.*

By George McAneny.

THE problem of police administration, as it is presented in New York, may hardly be said to differ essentially from that of almost any American city that one might name. There are wide differences of scale, but where there are evils to be corrected they are, in their essence, curiously similar, and the remedies demanded vary only in the manner of their application.

That these evils are traceable in the main to the intrusion of what is understood popularly as "politics" has become a trite saying. To most observers it is perfectly clear that where policemen, of whatever rank, are taught that not only their appointment and tenure, but even their chances of advancement within the department are owed to political outsiders, their sense of accountability to official superiors, or to duty itself, must be, if not deadened, very much benumbed. The next step in demoralization is not unnaturally an assumption on the part of the policeman that if matters of organization and discipline are controlled from outside, matters having to do with the *work* of the department will also be. Leniency in law enforcement, or the outright protection of those lawbreakers whom mere leniency cannot cover—so long as these are parts of a system bolstered by any kind of "politics—" are then accepted as matters of course, and the chain of wretched consequences with which we are but too familiar, usually follows.

I do not mean to say that debauchery is the inevitable accompaniment of political organization of the police, for the resultant evils may, in exceptional cases, stop short of such a result. But in New York the alliance with the worst elements of Tammany Hall in a system of "protection" of vice and crime will be remembered as one of the greatest scandals of present-

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day civilization. Of Philadelphia I will not presume to speak learnedly. But the history of like corruption, different in degree only; in Chicago, in St. Louis, in Minneapolis, and in many another city, has furnished us from time to time with most unpleasant reading.

While, however, the fact of police mal-administration has been apparent to everyone, there has been by no means so wide an understanding of the underlying causes, or of the proper corrective measures. Happily the present tendency is towards more attentive study and analysis of the subject, and here and there, it may fairly be claimed, excellent starts have been made in actual practice.

No one will contend that we can entirely cure by law those evils that are due to the proneness of individuals, both in and out of the department, to profit dishonestly, when they are willing to risk detection. None will deny, however, that through the operation of law the opportunities and even the temptations so to profit, may be minimized. The development of the discipline and general morale of the department, through which these things are so directly affected, must depend, in turn, on the plan of organization the law creates; and it will be high or low, as that plan is good or bad. Here must be laid the foundation of any betterment of conduct, and here, therefore, is the nearest field for those who seek police reform.

THE ELEMENTS OF CORRECT ORGANIZATION.

It would seem a very simple proposition that—the improper interference of "politics" being recognized as the chief source of trouble—the first efforts should be to get "politics" out, and, by a simple but mandatory substitution of the rule of merit as the determining factor at any stage of a policeman's career, to *keep* politics out. That this may ever be accomplished as effectually as, for instance, in the Army or Navy, may be too much too hope, but the means are certainly at hand for gaining the most that *is* practicable. Of cardinal importance among these are:

(1.) That the government and control of the Police Department should be vested in a single responsible commissioner, or chief, appointed and removable by the Mayor, and never in a board of "bi-partisan," or any other description.

(2.) That the uniformed force should be classified and graded on fixed lines, and that both original appointments and promotions should be based on the fitness of the candidate, in each case, determined through competitive tests, and conducted by a Civil Service Commission, acting independently of the appointing power.

(3.) That the power of discipline should be exercised strictly and consistently, either by the commissioner or some other authority, within the department; from whose decisions there should be no appeal, save where the question of correct or equitable procedure is involved.

Although the acceptance of these principles in practice has never been more than gradual, and although it might be difficult, even to day, to find all of them embodied in any one system, they have been tried sufficiently to show beyond cavil their practical and even fundamental importance.

The most serious hindrance to advances on these lines—next to the normal state of popular apathy—has been the usual hostility of legislatures, arising sometimes from honest distrust of the particular measures proposed, sometimes from other considerations.

THE FUTILITY OF BI-PARTISAN LEGISLATION.

In New York City, eight years ago, the police conditions were investigated by a Committee of the Senate, known in history under the title of its chairman, Mr. Lexow, of Nyack. Through the skill of this committee's counsel, a state of affairs was revealed that shocked the country and that called for the most radical correction. Nothing was brought out more plainly than that administration of the department by very "practical" politicians, and the systematic violation of the civil service laws, were chiefly responsible for those conditions. And yet in the legislation proposed by Mr. Lexow, and passed at the next following legislative session, in spite of strenuous public protest, a "bi-partisan" board of four members was expressly continued, while the control of the examining machinery was taken from the Civil Service Commission and vested in these "bi-partisan" appointing officers themselves.

Thus six years were lost, until, in 1901, the Lexow acts were repealed, and the present system was established.

The ingenuous theory on which the bi-partisan boards have always been defended by those who profit through their operation, is that with an even division of the commissionerships between representatives of two parties, neither will yield any partisan advantage to the other, that each will check any attempted partisan trickery of the other, and that thus politics will *automatically* be kept out. In practice, so far as we have observed in New York, this worked quite the other way. If both sides really kept the political "faith" under which they had accepted appointment, the nearest approach to a balance

was found in an approximately even division of spoils. But more frequently those commissioners chosen from the party opposite to that of the Mayor gradually become inclined to "sink" their particular kind of partisanship on occasion, and complacently to count themselves a minority, when "administration measures" were up, or privileges under distribution. So marked did this become towards the close of the existence of the last Tammany bi-partisan board, that promotions of Captains, made through violation of the civil service laws, were alloted in the proportion of five to one, the Republican members, who by that time, for their lack of valor, had been repudiated as such, meekly accepting the little end. At no time during this period was there, theoretically, any well-defined responsibility for either incompetency or wrong-doing. It was always "the other fellow." Our awful Devery, who having been ousted from the post of Captain for criminal conduct, was reinstated on a technicality by the Courts, was advanced rapidly over the heads of others in two higher grades, and appointed Chief, by the votes of two Republicans and two Democrats—but there have surely been times when neither party cared to stand as Mr. Devery's sponsor.

How far there still exists throughout the country the mistaken institution of the plural Police Commission, which has about as much basis in common sense as would have a proposition to vest the command of the Army in a Board of Generals having equal powers, I cannot say, but I am happy to count New York among the cities that finally have secured real and accountable executive authority in a single head.

STATUS OF CIVIL SERVICE REFORM LEGISLATION.

The lack of effective civil service rules, governing the organization of the uniformed forces, is still a wide one; but it is encouraging, as we stop to mark such progress as has been made, to find that among the great cities not only New York, Boston and Buffalo, but also Chicago, Pittsburg, Milwaukee and San Francisco already have such rules, and that not a few other cities and towns have established merit tests that are apt, at least, to prove serviceable, for foundation purposes. New York and Massachusetts are still the only states where the application of the rules to all municipal departments is universal.

While a Police Department without some fixed system of discipline is now a rarity, there is still room for improvement in this respect as well, and it is seriously to be considered whether in the matter of checks upon discipline, designed

primarily to protect the policeman against political or arbitrary discrimination, legislation has not been carried too far.

CONDITIONS IN NEW YORK.

The experience of New York City is certainly replete with suggestion to students of police conditions. There have been many trying failures to take advantage of obvious opportunities for betterment. Again and again, in legislation proclaimed as reformatory, the old mistakes have been repeated, and politicians, in the effort to save their own interests, have sacrificed correct principles with consequences disastrous to the interests of the city. The present system, which is certainly the best we have had, was offered as a great advance at the time of its establishment, but a Commission is already at work on amendments to correct what have been found to be its defects. Some of the evils developed in two-score years may be too deep rooted to yield to changes of administrative methods alone. Others certainly can be cured through the personal force of the man at the head, and by strict construction and enforcement of the laws and rules already at hand.

The only phase of the subject with which this paper is expected to treat in detail is that of the operation and effect of the merit system when properly established. On this phase the experience of New York is especially enlightening.

THE OLD METHODS OF APPOINTMENT.

The police of the metropolis number to-day 7,439 officers and men, for whose support and equipment an annual allowance of $11,000,000 is made. Below the Commissioner, his deputies and their personal clerks, the entire department is classified under the competitive civil service rules. During the ten years prior to 1895, the system of appointment under these rules was, however, very imperfect; and it was not until a year ago that the plan of promoting through competition was given a fair trial. It is practicable, therefore, to draw some very pertinent comparisons.

During the period immediately preceding the Lexow investigation, when police demoralization probably reached its blackest depths, there was understood to exist a species of fixed tariff for the sale of police positions. Candidates for original appointment as patrolmen paid $300, patrolmen who wished to be roundsmen paid $1,500, and so on up to the captainships, which were quoted at from $10,000 to $15,000. Many witnesses before the Investigating Committee testified to the

payment of the $300 sums, usually through "go-betweens," even indicating the proportion they believed to be the share of the examining surgeons before whom they had appeared. Three of the Commissioners were called upon to explain entries of $3,333.33 each, in their respective bank-books, made during the few days immediately following the appointment of a particular Captain. Although, through one of those seeming complacencies of outraged justice that it is so difficult for the layman to understand, one man only was ever sent to jail as a result of the disclosures of the Lexow Committee, and he subsequently released on error—the moral conviction of guilt was universal. And nothing was proven more convincingly than that the reasons for the selection of officers of the Police Department, high or low, were usually the very antithesis of those of merit and fitness.

Further analysis would have shown to anyone, as it did to many, that this condition was the direct result of perversion of the civil service law, and that under a proper administration of the law it would not have existed. The rules of that period, while requiring both physical and written examinations for admission, permitted the Police Commissioners virtually to select their appointees from any part of the eligible list. By this method, the element of competition was destroyed, and as soon as a candidate had managed to pass the surgeons, and to secure perhaps very little more than the minimum rating of the civil service examiners, he might be chosen over the heads of other competitors, for whatever reasons the Commissioners saw fit to recognize.

Where men secured appointment or advancement through corruption, the corrupt way of doing things was accepted as a rule of conduct. If large sums of money were paid to get positions, the next step was to use the opportunities offered by those positions to make good the outlay; and the subsequent progress of the police rake was usually a rapid one. If the office was owed to political intervention the results were scarcely less unfortunate. Although now and then men were no doubt selected for preferment on their merits, these must be counted the exceptions. The tendency, on the other hand, was to bring forward men of an inferior class, or those whose cleverness, if they possessed any, might be turned to questionable purposes.

APPOINTMENTS FINALLY MADE FOR MERIT.

With the election of Mayor Strong these methods were checked. One of the men appointed by the bi-partisan

Board Mr. Lexow had provided, was Theodore Roosevelt. The civil service rules to be framed by the Commissioners themselves were drawn, therefore, on correct lines. Mr. Roosevelt disliked the separate examining system, which he recognized as vitally wrong in principle; but he made the best that he could of it, and later was instrumental in securing a return to the centralized plan. Word went abroad that there was a real chance for candidates with ability only back of them, and the next examinations produced a strikingly good lot of men. There were not a few soldiers among them, and a large proportion were those who had worked in other callings especially fitting them for the rough life a patrolman is expected to lead.

There was virtually no jumping about the list. The successful men were appointed in the order of their standing, and, still known to fame as the "reform cops," they form to-day the best element in the department ranks. In making promotions a wide latitude, sixty-five per cent., in the total marking, was left for the discretion of the appointing power. This worked fairly well under Mr. Roosevelt, who was much impressed by the limitations of the competitive system as a basis for rating ability developed within the department. Not infrequently, however, he found a counter difficulty in the wide and sometimes erratic differences of judgment displayed by certain of his "bi-partisan" associates, in their estimate of the relative worth of competing officers.

Under the Greater New York charter, in 1898, and the general State Civil Service Act of the following year, the police rules of 1895 were merged in those of the Civil Service Commission, but their essential features were retained. The system of appointment was even strengthened. Selection under a close following of the order of the list was expressly required, and the machinery of examination was so carefully guarded that only through corrupt collusion of the civil service examiners themselves, could a man secure a place on the list to which he was not entitled. The sifting of candidates was done very thoroughly, so that the number placed on the lists was kept close to the number of vacancies actually required to be filled. For the examination of November 20, 1900, for instance, from among more than 4,000 candidates who appeared only 1,605 passed the medical and athletic tests, and only 835 the final written tests. Of this number 769 received appointments. For the examination of August 27 last, 2,724 were tested physically, 1,120 passing, and the number that will prove qualified when the marking of papers is completed

will probably be less than 400. The class of men finally presented for appointment is excellent. In brief, so far as original selection goes, the new system has been firmly established, and though gullible candidates are still, now and then, induced to pay money to outsiders who pretend to be able to aid them, even this petty swindling is becoming of rare occurence.

THE REFORM REACHES THE PROMOTION SYSTEM.

Once within the department, however, the policeman's reliance on merit has been until the present year, more than questionable. He is appointed on a salary of $800 a year and advances at fixed time intervals through seven grades, until the highest policeman's rank, at $1,400 a year, is reached. Beyond this, the power of advancement lies with the heads of the Department who, theoretically, have been required to make selections from among those ranking highest in free competition. Had the competitive rules been fairly administered the man who had started on his merits would naturally have expected to advance in the same way. His first concern would be to make a good record. No spirit, of course, could lend more to the efficiency and discipline of the force than this. But under the plan of giving the appointing power wide discretion the rules, up to 1901, allowed the Police Commissioner, in all promotion examinations, to determine 75 per cent. of the markings. The Tammany Commission used these marks not to reward meritorians service but to pick the men they wished for their own reasons to advance, and to fix the ratings of these so that they would be bound to come to the top. Thus the treatment of promotions as pure patronage remained practically unchecked. When, in the examination for captaincies completed November 24, 1900, it was discovered by the Civil Service Reform Association that the manipulation of markings had surpassed in boldness all previeus performances of the sort, public complaint was made, and as a result of the official investigation that followed, the eligible list was set aside as fraudulent. Nineteen captains had already been appointed from it, but their titles are now being contested in the Courts, and pending a settlement they draw the pay of Sergeants. In this case, as previously intimated, the promotions were almost openly divided among the four Commissioners and those among the two hundred candidates who were not desired were deliberately marked down to a point at which their names could not possibly be reached. The actual service-records went for nothing.

The ideal system of police promotion would no doubt give the head of the force the unrestricted right to select for positions of command those whose fitness he would best know how to ascertain. It has been urged that this principle at least is so important that it would be better, in order to give it recognition, to submit to the bad selections that will be made from time to time. When honest men are in control this argument always appears to have the greater weight. It is the judgment of the writer, however, that, rather than suffer the reaction toward demoralizing methods that comes inevitably when the administration has fallen back into political hands, it would be better to select men for promotion by lot.

In 1901, following the investigation to which reference has been made, the State Civil Service Commission brought about the amendment of the promotion rules so as to reduce the allowance of discretion allowed the appointing power almost to a nullity. The ratings were required to be under three heads—50 per cent. to be based on the actual written record of the candidate, 25 per cent. on seniority and 25 per cent. on an examination on knowledge of police duties, laws and ordinances, etc. The first examination under this change was completed on April 14 last. As a result of it fourteen captains have been appointed, in whose selection the department had, in fact, very little say, but not one of whom was advanced through any other power or influence, except his own demonstration of fitness. Appointments of sergeants and roundsmen, based on similar tests are shortly to follow. The far-reaching significance of this change of method will readily be appreciated. The new system no doubt, will need improvement—particularly in the direction of securing more comprehensive service and efficiency records than those at present kept,—but as it stands it is incomparably better than the system it replaces.

THE REGULATION OF REMOVALS.

Though the matter of tenure comes properly within the purview of the merit system the actual regulation of removals does not belong to the civil service law. The system of discipline now in force in the New York Police Department, which has been very much discussed in connection with the present situation in police affairs, is established by the City Charter. The provision, contained in Section 300, is as follows:

"He (the Police Commissioner), shall have power and is authorized to adopt rules and regulations for the examination, hearing, investiga-

tion and determination of charges made or preferred against any member or members of the said police force, but no member or members of the Police force . . . . shall be fined, reprimanded, removed, suspended or dismissed from the Police force until written charges shall have been made or preferred against him or them, nor until such charges have been examined, heard and investigated before the Police Commissioner or one of his deputies, upon such reasonable notice to the member or members charged, and in such manner of procedure, practice, examination and investigation as the said Commissioner may, by rules and regulations, from time to time prescribe."

Section 302 defines the causes for which members of the force may be tried and disciplined, which include "any neglect of duty, violation of rules, or neglect or disobedience of orders, or absence without leave, or any conduct injurious to the public peace or welfare, or conduct unbecoming an officer, or any breach of discipline." In another Section the Commissioner is empowered in his discretion "to suspend without pay, pending the trial of charges," the assumption being that, if any officer so suspended is exonerated he will receive pay for the period elapsed, on his restoration to duty.

The operation of the trial clause has brought frequent complaint from those who have attempted to reform the force by purging it of men whose unfitness is morally clear, but who cannot be reached by direct evidence. The Courts have held that the proceedings must be formal, and that the officer under trial may, as a matter of right, be represented by counsel. Though their decisions have on some important points been conflicting, they have as a rule reserved the right to review the evidence taken and to reverse the judgment of the Commissioner where they deem such evidence to have been insufficient or "improperly admitted." Not infrequently they have ordered reversals on questions of procedure alone.

The authority of the Commissioner must be measurably weakened when it is understood among his subordinates that their laxities or even flagrant failures of duty will go unpunished unless they may be proven by exact evidence, and to the satisfaction of a power higher than he. At the same time there can be no doubt that the peculiar nature of police work requires that a high degree of protection should be given to members of the force, of whatever grade, and that the process of a fair and open enquiry into the justness of a complaint—if it can be fair alike to the men and to the Department—should be retained.

Everyone understands that a fairly large proportion of the men in the higher grades are to-day hopelessly bad—that

systematic neglect of duty, or worse, continues in many quarters and that one of the most pressing problems with which the present administration has to deal is how to get rid of this element. But, though the question of removing through legislation the real embarrassments that come of unrestricted appeals to to the Courts may well be considered, there are some provisions of the law as it stands the efficacy of which should not be underestimated. The Commissioner, for instance, has power to frame or revise the rules governing the conduct of the force absolutely within his discretion. He may through these rules. hold individual officers to stricter accountability either for failure to detect and report violations of law, or for their personal acts, simply by changing the official definition of their duties—and either "neglect of duty" or violation of any one of these rules, however modified, would remain a legal cause for discipline. The rules, as they stand, form a cumbrous and unintelligible body at best and might well be revised and reduced to simplicity and directness, on general principles. As it has been held by the Courts that the penalty imposed for an offence, no matter how severe, can not be set aside. once the offence is proven, the scale of punishment may be fixed as he chooses. even to the imposition of the maximum penalty of dismissal for the minimum of delinquency. He may use the right of suspension pending trial to oust at once those offenders of whose guilt he may be morally certain. Finally, as the forms of trial procedure may be fixed as he prescribes, and need not, by any means, correspond to those of a Court, he may through the formal promulgation of such rules and regulations as the charter permits him to establish, simplify very greatly the present methods, and reduce materially the chances of interference by the Courts on questions of procedure alone. Up to the present time no such rules have beeen made, and it is in their absence that the Courts, falling back on the general rules of practice and pleading, so often find cause for interference.

The difficulties attending the exercise of discipline have certainly been exaggerated in the past, and by forceful use of the means at hand they might be overcome to an unexpected degree. In this direction the administration is moving. Fines of from one to three "days pay" for offences that in the army would be punished by disgrace are of much less frequent occurence. Within the past week a patrolman, guilty of being for forty minutes off post has been recommended for dismissal. A year ago "three days" or a reprimand would have been considered sufficient correction for an error so trifling.

While however, the present trend of things is towards better use of the powers of discipline, and the tone of the force is keying up, in consequence, the process of removing the undesirable is unnecessarily complicated by law, and legislation making the verdict of the Commissioner on evidence properly taken, the final word, may very fairly and properly be asked.

It will be seen that in the solution of our problem in New York we are making good headway, and that the value of the merit rule when rightly understood and rightly applied—in the matters of appointment, promotion or tenure alike—has been shown in unmistakable and most encouraging ways.

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